

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

DOCKET & FILE

IN RE APPLE REITs LITIGATION

Case Number: 1:11-cv-02919-KAM-JO

LAURIE BRODY, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

DAVID LERNER ASSOCIATES, INC., DAVID  
LERNER, ALAN P. CHODOSH, JOHN  
GERARD DEMPSEY JR., MARTIN LERNER,  
STEVEN SORMANI, APPLE REIT SIX, INC.,  
APPLE REIT SEVEN, INC., GLADE M.  
KNIGHT, and APPLE SUITES REALTY  
GROUP, INC.,

Defendants.

**STIPULATION AND ORDER REGARDING  
CONSOLIDATION OF ACTIONS AND  
APPOINTMENT OF INTERIM CLASS CO-COUNSEL**

On March 6, 2012, the Court directed Girard Gibbs LLP and Zamansky & Associates, LLC to confer with all parties and file a stipulation regarding (1) consolidation of the above-captioned *Apple REITs* and *Brody* actions; (2) appointment of Girard Gibbs and Zamansky & Associates as interim class co-counsel under Federal Rule of Civil Procedure 23(g)(3) for the non-PSLRA claims asserted on behalf of investors in Apple REITs Six, Seven and Eight; and (3) a schedule for the filing of a second amended complaint and revised briefing schedule for

answers or motions to dismiss, if necessary. In accordance with the Court's order, the parties respectfully submit the following:

**WHEREAS:**

1. The Court entered an order on December 12, 2011 consolidating, under Federal Rule of Civil Procedure 42(a), the three cases then pending before this Court into *In re Apple REITs Litigation*, Case No. 1:11-cv-02919-KAM-JO. The Court also appointed plaintiffs Marvin Bendavid, Laura Berger, Barbara Shefsky and Debra and Stanley Kronberg (also known as the DLA Investor Group) as lead plaintiffs on behalf of investors in Apple REITs Nine and Ten, and appointed Girard Gibbs and Zamansky & Associates to serve as lead counsel for the proposed class in the consolidated action under the PSLRA, 15 U.S.C. §77z-1(a)(3)(B)(i) & (ii). (*Apple REITs* Dkt. No. 78)

2. On February 17, 2012, lead plaintiffs filed a consolidated complaint on behalf of investors in Apple REITs Six, Seven, Eight, Nine and Ten against David Lerner Associates (DLA), David Lerner, Apple REITs Six, Seven, Eight, Nine, and Ten and related entities, and several of the REITs' officers and board members. (*Apple REITs* Dkt. No. 82)

3. *Brody* was filed on February 16, 2012 and asserts claims on behalf of investors in Apple REITs Six and Seven against DLA, David Lerner, several other DLA officers, Apple REITs Six and Seven, Apple Suites Realty Group, and Glade M. Knight. (*Brody* Dkt. No. 1) Plaintiff Brody identified the case as "related" to the *Apple REITs* action and filed a Notice of Related Case on the same day she filed her complaint. (*Apple REITs* Dkt. No. 83; *Brody* Dkt. No. 2) *Brody* was initially assigned to the Honorable Edward R. Korman but was reassigned to this Court on February 27.

4. Lead plaintiffs filed a letter with the Court on February 27 seeking leave to move for (1) consolidation of the *Apple REITs* and *Brody* actions under Rule 42(a) and (2) appointment of Girard Gibbs and Zamansky & Associates as interim class co-counsel on behalf of investors in Apple REIT Six, Seven, and Eight under Rule 23(g)(3). (*Apple REITs* Dkt. No. 86, *Brody* Dkt. No. 4.)

5. The Court ordered all parties to respond to lead plaintiffs' letter by March 2. In response, defendants and plaintiff *Brody* advised the Court that they do not oppose consolidation. (*Apple REITs* Dkt. No. 86, 87, 88; *Brody* Dkt. No. 5 & 6) Plaintiff *Brody* does not oppose appointment of Girard Gibbs and Zamansky & Associates as interim class co-counsel, and defendants take no position on the issue of appointment of counsel and reserve the right to oppose any motion for class certification. (*Id.*)

**NOW, THEREFORE, IT IS STIPULATED AND AGREED**, by and among counsel for the parties named in these actions, as follows:

1. Under Federal Rule of Civil Procedure 42(a), *Brody* shall be consolidated for all purposes into *In re Apple REITs Litigation*, 1:11-cv-02919-KAM-JO. Any action asserting claims on behalf of investors in Apple REITs Six, Seven, Eight, Nine or Ten or arising from any transaction relating to the shares of the Apple REITs that is hereafter filed in, or transferred to, this District and that contains allegations similar or relating to the facts and claims alleged in the consolidated complaint in *Apple REITs* shall be consolidated into this action. This order shall apply to any such related action, absent further order of the Court, *or a showing of good cause by any party opposing consolidation.*

2. Girard Gibbs LLP and Zamansky & Associates, LLC are appointed as interim class co-counsel for the proposed class of investors in Apple REIT Six, Seven and Eight under Federal Rule of Civil Procedure 23(g)(3). As interim class co-counsel for the proposed classes

of investors in Apple REITs Six, Seven, and Eight and lead plaintiffs' counsel for investors in Apple REITs Nine and Ten, Girard Gibbs and Zamansky & Associates shall generally be responsible for coordinating the conduct of this litigation and are authorized to:

- a. Determine, coordinate and present to the Court and defendants the plaintiffs' positions on all relevant matters arising during pretrial and trial proceedings;
- b. Act as or designate spokespersons for plaintiffs and the proposed class at pretrial proceedings;
- c. Coordinate the initiation and conduct of discovery, pretrial proceedings and trial;
- d. Brief and argue motions;
- e. Employ and consult with experts;
- f. Conduct settlement negotiations on behalf of plaintiffs and the proposed class;
- g. Direct and coordinate the work performed by all plaintiffs' counsel and ensure that pretrial preparation is conducted effectively, efficiently and economically;
- h. Monitor the activities of plaintiffs' counsel to avoid duplication of effort and unnecessary expenditures of time and expense; and
- i. Perform any other duties incidental to the proper coordination of pretrial and trial activities or authorized by further order of the Court.<sup>1</sup>

3. Lead plaintiffs have advised defendants that they do not intend to file a second amended complaint, and the parties agree that: (i) the consolidated complaint filed on February 17, 2012 on behalf of investors in Apple REITs Six, Seven, Eight, Nine and Ten against David Lerner Associates (DLA), David Lerner, Apple REITs Six, Seven, Eight, Nine, and Ten and related entities, and several of the REITs' officers and board members (Apple REITs Dkt. No. 82) is the operative complaint; (ii) the defendants are not required to respond to the *Brody* complaint as it is consolidated with and superseded by the operative complaint; and (iii) no

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<sup>1</sup> Defendants take no position with respect to this paragraph 2.

adjustment of the briefing schedule set forth in the Court's January 17, 2012 order is necessary.

Accordingly, defendants shall serve on lead plaintiffs via email their answers or motions to dismiss by April 18, 2012. If defendants move to dismiss, lead plaintiffs shall serve on all defendants via email any opposition by May 18, 2012. Defendants shall serve on lead plaintiffs via email any reply papers in support of any motions to dismiss by June 18, 2012. (*Apple REITs* Dkt. No. 80)

Dated: March 12, 2012

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**SO ORDERED:**

s/KAM

Dated: Brooklyn, New York  
March 13, 2012

Hon. Kiyo A. Matsumoto  
United States District Judge